



DC APPLESEED

Solving DC Problems

1111 Fourteenth Street, NW
Suite 510
Washington, DC 20005

Phone 202.289.8007
Fax 202.289.8009
www.dcappleseed.org

WALTER SMITH
Executive Director

Board of Directors

CHAIR: JON BOUKER
Arent Fox LLP

VICE CHAIR: ANNE MARGARET CONNOLLY
Weil, Gotshal & Manges LLP

SECRETARY: DEBORAH CHOLLET
Mathematica Policy Research, Inc.

TREASURER: HANK BROTHERS
HOLLAND & KNIGHT LLP

PAST CHAIR: RICHARD HERZOG
Harkins Cunningham LLP

PAST CHAIR: NICK FELS
Covington & Burling LLP

PAST CHAIR: PATRICIA BRANNAN
Hogan Lovells US LLP

At-Large: MATTHEW YEO
Steptoe & Johnson LLP

At-Large: WILLIAM STEIN
Hughes, Hubbard & Reed LLP

LUCINDA BACH
DLA Piper LLP

STEVE BASKIN
Mayer Brown LLP

ROBERT BOBB
The Robert Bobb Group, LLC

RICK BRESS
Latham & Watkins LLP

KATHERINE S. BRODERICK
UDC - David A. Clarke School of Law

PATRICK CAMPBELL
Paul, Weiss, Rifkind, Wharton & Garrison LLP

PETER EYRE
Crowell & Moring

SALLY GARR
PATTON BOGGS LLP

JEFFREY HANDWERKER
Arnold & Porter LLP

LORIE MASTERS
Perkins Coie LLP

BOB PECK
Gensler

THORN POZEN
Goldblatt Martin Pozen LLP

GARY RATNER
Citizens for Effective Schools, Inc.

VICTOR REINOSO
New Schools Venture Fund

OLIVIA SHAY-BYRNE
REED SMITH LLP

STEVEN STANTON
Deloitte Advisory

ELEANOR SMITH
Zuckerman Spaeder

JOSH WYNER
The Aspen Institute

Affiliations listed only for identification purposes

June 8, 2016

The Honorable Stephen C. Taylor, Commissioner
D.C. Department of Insurance, Securities and Banking
810 First Street NE
Suite 701
Washington, D.C. 20002

Re: Review of Group Hospitalization and Medical Services, Inc.'s 2011 Surplus

Dear Commissioner Taylor,

Next week, DC Appleseed will file an action in the D.C. Court of Appeals seeking an order requiring you to fulfill the clear obligations imposed by the Medical Insurance Empowerment Amendment Act (MIEAA).

In 2008, the Council passed MIEAA to hold the largest health insurance company in the region, CareFirst BlueCross BlueShield, accountable to its nonprofit mission. MIEAA requires the Commissioner of the D.C. Department of Insurance, Securities, and Banking (DISB), at least once every three years, to determine whether CareFirst has accumulated excess surplus that must be reinvested in District health needs. Eight years later, the DISB still has not issued a final determination properly applying MIEAA.

The statute originally required the Commissioner to determine within 120 days whether CareFirst's surplus at the end of 2008 was excessive. A previous Commissioner did not make a determination until October 2010. The D.C. Court of Appeals then [unanimously reversed](#) and ordered a new determination that correctly applies the statutory standards. The Court also made clear that MIEAA required the new determination to be completed within three years after the previous determination—that is, by October 2013.

The Commissioner did not comply. In December 2014, more than a year after the court-ordered deadline, [the Commissioner determined](#) that the company had \$56 million in excess surplus at the end of 2011 that was attributable to the District and must be reinvested in the District. The Commissioner gave CareFirst until March 16, 2015 to file a plan to reinvest the \$56 million. The company did not file the plan as ordered.

More than a year has passed since then, and the Commissioner has failed to enter a final order. Acting on this unreasonable delay, the D.C. Council has held four hearings in which it has urged the

Commissioner to act. Furthermore, the Council has [unanimously passed an emergency resolution](#) calling on him to act.

By failing to act, the Commissioner has violated the requirements of MIEAA, the highest Court in the District of Columbia, and the Council, which drafted and passed MIEAA. The Commissioner's inaction has furthermore enabled CareFirst to escape its obligations under MIEAA. Just last week in [its June 1, 2016, filing with the DISB](#), CareFirst stated that its \$960-million 2015 surplus should be, at least, nearly \$200 million higher—entirely ignoring that its surplus is already well above the maximum permissible amount set by the previous Commissioner.

At this point, there appears to be no way to vindicate the statute, protect the public interest, and hold CareFirst accountable other than to seek redress in the Court of Appeals.

Sincerely,



Walter Smith, Executive Director
DC Appleseed Center



Richard B. Herzog
Harkins Cunningham LLP



Deborah Chollet, Ph.D.



Marialuisa S. Gallozzi
Covington & Burling LLP

cc: The Honorable Muriel Bowser, Mayor
The Honorable Karl Racine, Attorney General
The Honorable Phil Mendelson, Chairman
The Honorable Vincent Orange, Councilmember
The Honorable Charles Allen, Councilmember
The Honorable Brianne K. Nadeau, Councilmember
The Honorable Elissa Silverman, Councilmember
The Honorable Brandon Todd, Councilmember
The Honorable Mary Cheh, Councilmember
Mr. Philip Barlow, Associate Commissioner for Insurance, DISB
Ms. Betsy Cavendish, General Counsel, Executive Office of the Mayor
Ms. Ellen Efros, General Counsel, Council of the District of Columbia
Mr. Peter Johnson, Director, Committee on Business, Consumer, and Regulatory Affairs
Mr. Todd Kim, Solicitor General, Office of the Attorney General
Mr. Eugene Kinlow, Director, Federal and Regional Affairs
Mr. Barry Kreiswirth, General Counsel & Senior Policy Advisor, Office of the City Administrator
Mr. Adam Levi, Assistant General Counsel, DISB
Dr. LaQuandra Nesbitt, Director, Department of Health
Mr. Ronald Ross, Deputy Director, Mayor's Office of Legal Counsel